

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 87-100

In the Matter of

Amendment of Sections 73.3526(e)(2)
and 73.3527(e)(2) of the Commission's
Rules to Shorten the Record Retention
Periods for Public File Materials

RM-5621

REPORT AND ORDER
(Proceeding Terminated)

Adopted: March 8, 1988;

Released: April 7, 1988

By the Commission:

1. The Commission has before it the *Notice of Proposed Rule Making*, 2 FCC Rcd 2498 (1987) proposing to amend Sections 73.3526(e)(2) and 73.3527(e)(2) of the Commission's Rules to shorten the period of time during which licensees of broadcast stations must retain applications and related material in their public files.

2. In response to the *Notice*, comments were filed by the law firm of Fletcher, Heald and Hildreth (FHH) on behalf of its television and radio broadcast clients; the North Carolina Association of Broadcasters (NCAB); the National Association of Broadcasters (NAB); CBS, Inc. (CBS) and Cox Enterprises, Inc. (COX).

BACKGROUND

3. Section 73.3526(e) of the Commission's Rules provides that the licensee of a commercial broadcast station must retain applications and related material placed in the public file for a period of seven years from the date of application or until there is final FCC action on the second renewal application, whichever is later. Section 73.3527(e) of the rules imposes the same requirement on noncommercial educational stations. When this provision was originally adopted, license terms for television and radio stations were three years. Thus, licensees receiving regular renewals of license were required to keep the designated public file materials for the minimum retention period of seven years or until action on the second of two three year renewal applications.

4. The Omnibus Budget Reconciliation Act of 1981 extended the license terms for television and radio stations to five and seven years, respectively. Consequently, the provision in the rules relating to final action on the second renewal became significant, resulting in required retention periods for licenses receiving regular renewals of at least ten years for television stations and 14 years for radio stations.

5. The *Notice* stated that the present public file retention time period was intended to be of sufficient duration to give the public a chance to discern any trends in the licensee's performance, not because of some special need

to retain records over two renewal periods. We noted that the congressional action had the unintended effect of making the retention period unnecessarily lengthy and imposing excessive administrative burdens on broadcast licensees without providing additional informational benefits for the public. We further stated that a shorter retention period is long enough to provide the public with a clear picture of station activity and that it would be administratively more efficient for required retention periods to coincide with the present renewal periods.

COMMENTS

6. All of the commenters in this proceeding support the Commission's proposal to modify its rules to reduce the length of time broadcasters must retain documents in their public files. FHH states that retention of materials for one renewal period, a period of 5 or 7 years, will provide the public with a sufficient volume of material to discern trends in station activity. At the same time, the administrative burden on television and radio stations will be significantly reduced.¹

7. NCAB states that the revision would be consistent with the Paperwork Reduction Act of 1980. 44 U.S.C. 3501(1). The NAB believes that the proposal would restore the rule to its original intent of ensuring availability of material long enough for the public to have reasonable access and to be available during a station's renewal time. The NAB also agrees that the proposal would be consistent with the Paperwork Reduction Act and with the purpose of the Omnibus Budget Reconciliation Act.

8. CBS states that no reason exists to perpetuate the longer retention periods, which are unduly burdensome and an unintended consequence of extended license terms. Lastly, Cox states that the present retention periods require maintenance of excessive amounts of material which have little, if any regulatory function. Cox contends that the proposed modification would substantially ease the recordkeeping burden imposed on licensees without adversely affecting the Commission's ability to fulfill its regulatory responses or the public's ability to participate in the regulatory process.

DISCUSSION

9. As noted above, all commenters support our efforts to reduce the length of time broadcasters must retain documents in their public files. They agree that in light of the Omnibus Budget Reconciliation Act of 1981, the present two license term retention period is too long and imposes excessive administrative burdens on broadcast licensees. As we stated in the *Notice*, the substantial lengthening of the retention period was an inadvertent result of the 1981 extension of the license terms for television and radio, not the product of a policy decision that a longer retention period further advanced the public interest. Therefore, we find, the public interest concerns underlying the public file document period can be met by a shorter and less burdensome time period. Accordingly, we shall eliminate the minimum 7 year retention period and provide that the period of retention extend to one license term (5 years for television and 7 years for radio) or until grant of the first renewal application, whichever is later.

10. Pursuant to the authority contained in Sections 4(i) and (j), and 303 of the Communications Act of 1934, as amended, IT IS ORDERED, That effective May 23, 1988,

Sections 73.3526(e)(2) and 73.3527 (e)(2) of the Commission's Rules amended as follows in the attached Appendix B.

11. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

12. The Office of Management and Budget has approved the collections of information requirements contained in these rules. The OMB control numbers for these collections of information are 3060-0214 and 3060-0215.

13. The Final Regulatory Flexibility Analysis is set forth as Appendix A. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603 (a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Sections 601 *et seq.*, (1981).

14. For further information concerning this proceeding, contact Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

Final Regulatory Flexibility Analysis

I. Need and Purpose of Rule

In 1981, the public file retention period for broadcast stations was inadvertently lengthened when the three-year license terms for television and radio were increased to 5 and 7 years, respectively. This rule change will significantly reduce for the licensee much of the paperwork associated with the maintenance of public inspection files, while still providing the public access to enough information about the licensee to evaluate its performance.

II. Flexibility Issues Raised in the Comments

All of the commenters in this proceeding support the Commission's proposal to modify its rules to reduce the length of time broadcasters must retain documents in their public files.

III. Significant Alternatives Considered But Not Adopted

We are unaware of any significant alternatives that would minimize the impact of this proposed rule change on small entities and would be consistent with its stated objective. The rule would have no adverse impact on such entities but rather would greatly reduce the administrative burdens imposed by the unnecessarily long retention periods currently in place.

APPENDIX B

Part 73 of Title 47 of the CFR is amended as follows:

Part 73 - Radio Broadcast Service

1. The authority citation for Part 73 continues to read: Authority: 47 U.S.C. 154,303

2. Section 73.3526 is amended by revising paragraph (e)(2) as follows:

Section 73.3526 - Local public inspection file of commercial stations.

* * * * *

(e) * * *

(1) * * *

(2) The permittee or licensee shall maintain such a file so long as an authorization to operate the station is outstanding, and shall permit public inspection of the material as long as it is retained by the licensee even though the request for inspection is made after the conclusion of the required retention period specified in this paragraph. However, material which is voluntarily retained after the required retention time may be kept in a form and place convenient to the licensee and shall be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee.

Applications and related material placed in the file shall be retained for a period beginning with the date that they are tendered for filing and ending with the expiration of one license term (five (5) years for television licensees or seven (7) years for radio licensees) or until the grant of the first renewal application of the television or radio broadcast license in question, whichever is later, with two exceptions:

(i) engineering material pertaining to a former mode of operation need not be retained longer than 3 years after a station commences operation under a new or modified mode; and

* * * * *

3. Section 73.3527 is amended by revising paragraph (e)(2) as follows:

Section 73.3527 - Local public inspection file of noncommercial educational stations.

* * * * *

(e) * * *

(1) * * *

(2) The permittee or licensee shall maintain such a file so long as an authorization to operate the station is outstanding, and shall permit public inspection of the material as long as it is retained by the licensee even though the request for inspection is made after the conclusion of the required retention period specified in this paragraph. However, material which is voluntarily retained after the required retention time may be kept in a form and place convenient to the licensee and shall be made available to the inquiring party, in good faith after written request, at a time and place convenient to both the party and the licensee.

Applications and related material placed in the file shall be retained for a period beginning with the date that they are tendered for filing and ending with the expiration of one license term (five (5) years for television licensees or seven (7) years for radio licensees) or until the grant of the first renewal application of the television or radio broadcast license in question, whichever is later, with two exceptions:

(i) engineering material pertaining to a former mode of operation need not be retained longer than 3 years after a station commences operation under a new or modified mode; and

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FOOTNOTE

¹ FHH also proposed that during the course of this proceeding the Commission should review Section 73.3526(a)(6), which *inter alia*, requires public file retention of the 1974 FCC publication, "The Public and Broadcasting-A Procedure Manual." Specifically, FHH proposed that the Commission delete or update this requirement since much of the information in the manual is outdated. FHH also proposed that the Commission delete Sections 73.3526(a)(1) (citizen's agreements) and 73.3526(a)(7) (public letters). Since these sections were not included in the *Notice*, however, consideration of these provisions are outside the scope of this proceeding.